IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

CONTEMPT PETITION NO.121 OF 2007
IN
WRIT PETITION NO.2027 OF 2000

Neminath Co-operative Housing Society
Ltd. & Anr. ...Petitioners.

Vs.

Brihanmumbai Municipal Corporation
& Ors. ...Respondents.

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Mr. Santosh B. Narwade i/b. M/s. M.P. Vashi & Asso. for the Petitioners.
Ms.Shobha Ajitkumar for Respondent Nos.1 to 4.
Mr.Rajiv Narula for the occupant.

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CORAM :DR.D.Y.CHANDRACHUD, J.
November 27, 2007.

P.C.:

The Contempt Petition is based on an alleged non-compliance of an order dated 26th July 2002, passed in Writ Petition 2027 of 2000, an order dated 30th July 2004 passed in Contempt Petition 62 of 2004 and an order dated 8th July 2005 passed in Contempt Petition 2 of 2005. The Petitioners had filed a Writ Petition in this Court for a direction to demolish an allegedly unauthorised structure. On 26th June 2002, the Division Bench directed the

Corporation to take steps for the demolition of the structure in accordance with the sanctioned plan after furnishing a personal hearing and if it was found to be unauthorised, in accordance with law. Since this order was not complied with, Contempt Petition 62 of 2004 came to be moved. A statement was made in those proceedings on behalf of the Municipal Corporation on 30th July 2004 that a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 would be issued within a period of one week and an order would be passed after six weeks. The Contempt Petition was disposed of. Thereupon, a notice was issued under Section 351 on 3rd August 2004. On 19th January 2005, the Assistant Commissioner, after hearing the parties, passed an order directing the Building Proposals Department to issue a final notice within a period of one month on the owner of the structure. Thereafter, a notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 was issued. In the meantime, the second Contempt Petition was taken out, namely, Contempt Petition 2 of 2005, in which an order was passed on 8th July 2005, recording the statement of the Municipal Corporation that the notice issued by the Building Proposals

Department has been challenged in the City Civil Court in Suit 1023 of 2005. The Municipal Corporation stated that an injunction had been issued by the City Civil Court, but the Corporation made a statement that it would take steps for vacating injunction within a period of four weeks. The Contempt Petition was disposed of.

The Municipal Corporation has stated that after the order in the second Contempt Petition, an affidavit in reply was filed before the City Civil Court on 12th August 2005 albeit with a delay of five days. The Motion was heard and disposed of on 12th July 2006 against which an Appeal from Order has been admitted before this Court. The suit itself was dismissed in default on 18th July 2007. An application for restoration of the suit has been taken out before the City Civil Court and it has been stated that on 24th October 2007, the City Civil Court has restrained the Municipal Corporation from enforcing the notices. The Court has been informed that the application for restoration is to be heard tomorrow before the City Civil Court and it is expected that the parties would cooperate in the City Civil Court for the early disposal of the application.

In view of the affidavit filed on behalf of the Municipal Corporation, I am of the view that it is not necessary or appropriate for this Court to pursue the exercise of the contempt jurisdiction any further. Counsel appearing on behalf of the Municipal Corporation states that the Municipal Corporation shall duly abide by the orders, if any, that may be passed upon the application for restoration and should there be no order of injunction holding the field, the Municipal Corporation shall forthwith take steps in accordance with law.

The Contempt Petition is accordingly disposed of.

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